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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of EMIKO Y. and DONALD A. BELT.	H045185 (San Benito County Super. Ct. No. FL-15-00196)
EMIKO Y. BELT, Appellant, v. DONALD A. BELT, Respondent.	

Emiko Y. Belt appeals from a judgment in the dissolution of her marriage to Donald A. Belt. Appellant contends: (1) she was deprived of a fair trial due to the use of a noncertified interpreter; and (2) the trial court erred in its division of property. The judgment is affirmed.

I. Factual and Procedural Background

Appellant, who was approximately 64 years old at the time of trial, was born in Japan. She met respondent in Japan while she was working as a guide and an interpreter. In 2000, appellant came to the United States as a student after respondent told her that he

would pay for her housing, transportation, and education. While appellant attended Gavilan College and San Francisco State University, she lived in both San Francisco and Hollister. After appellant's student visa was revoked, the parties were married in August 2006.

In 2009, respondent filed a petition for dissolution of marriage. At that time, both parties were represented by counsel. Appellant's counsel drafted a marital settlement agreement, which appellant refused to sign. Respondent then "gave up" because he was paying "tens of thousands of legal fees . . . ."

In May 2015, appellant filed a petition for dissolution of marriage. The trial was held in June 2017. Appellant appeared in pro per and an interpreter was present in court as well. Respondent appeared with counsel.

At the beginning of trial, appellant stated that Japanese is her primary language and English is her second language. She explained that she would speak in English and would use the interpreter if necessary. In response to the trial court's question as to whether she was certified, the interpreter replied that she was not, but that she was "provisionally qualified as Japanese interpreter registered with the California state court systems."

Respondent's counsel suggested that it would be more efficient if respondent testified first. The trial court asked appellant whether she wanted to change the normal procedure. She replied, "No. So follow the law, I wanted to do first." In English, appellant summarized the parties' relationship by noting that they lived together as a couple even after she filed her petition. Shortly after appellant began testifying, the trial court interrupted her to state: "And I just should say for the recording record that even though . . . the interpreter's there ready to assist you, so far you have been testifying in English, and although you have an accent I've been able to understand you. When I'm not able to understand you, I'll let you know and ask the interpreter to have you say it in

Japanese so she can interpret it. But so far I've been able to follow you. So if you would like to continue, go ahead."

According to appellant, respondent gave, or promised to give, her the Riverside and Sunnyslope properties in Hollister as well as property in Oregon, Lake Elsinore, and San Diego. In 2000, she began working in respondent's audiology office and she became the office manager in December 2006. Appellant testified that respondent told her that the audiology business was "all" hers. Appellant also worked in the Hollister Japanese Temple Garden (Temple Garden), which was located on the Riverside property.

The trial court interrupted appellant and stated that it had "been able to follow [her] fine" and asked respondent's counsel whether he was able to understand her testimony. Counsel replied that he was "getting 75 percent of it, which is probably enough." The trial court asked appellant if it would be better for her to speak in Japanese and have the interpreter interpret her testimony. Appellant replied, "[A] little bit I want to talk in English" and "it's only few minutes." She then continued in English. She had no income, was spending her savings, which were almost gone, and needed spousal support.

At one point, the trial court stated, "I'm afraid I'm losing you a little bit right now, so would you go ahead and speak in Japanese and tell me what you're explaining." Through the interpreter, appellant testified that the director of the Temple Garden rented the property for $1 per year, that she had been a director, that she was "kicked out" with no notice, and that she had the right to remain as a director of the Temple Garden. She proceeded to testify through the interpreter for a few more sentences and then began testifying in English.

The trial court stated: "I notice you've been essentially reading your testimony with -- sometimes extrapolating from that without referring to your notes. It looks like you've completed that now. Did you wish to -- now you probably should continue with

the interpreter. [¶] . . . [¶] . . . But maybe you should go ahead and speak in Japanese to the interpreter so we can catch every word." She then testified through the interpreter and referred to a bamboo forest and her involvement in planting it. She immediately switched to English and the trial court explained that this testimony might "not have a great deal to do with what's decided in this case." The trial court asked her to state "what it is [she was] asking the Court to rule." Through the interpreter she testified that she believed that she was entitled to the Riverside and Sunnyslope properties, the audiology business, and the Temple Garden. She had "been working hard for the past 17 years . . . and made a contribution to increase income."

Appellant presented photographs of the parties socializing together and of her involvement in improving the Temple Garden. She testified in English about some of the photographs. When the trial court asked whether the dates that were represented in the photographs were accurate, appellant replied through the interpreter that they were "99 percent accurate." She began testifying in English again about her family. When the trial court did not understand her testimony, it asked her to testify in Japanese. Appellant responded in English. The trial court again asked her to speak in Japanese and respondent's counsel stated that he was "missing a lot of this now all of a sudden." The trial court explained, "So when you're [reading English], I think it's okay, we can follow you pretty well. But when you deviate, when you leave your written script, please go and speak in Japanese." The trial court also stated, "If we have any difficulty, and, Counsel, if you have difficulty, we'll interrupt, but go ahead and if you would repeat what you just said in Japanese, please, to the interpreter." Through the interpreter, appellant testified, "Well, I use English in my daily life now. And even though I try to speak in Japanese, naturally I started speaking in English, and I am sorry after you repeatedly ask me to speak in Japanese. I apologize."

On cross-examination, appellant testified primarily through the interpreter, but she occasionally answered questions in English. Appellant claimed an interest in respondent's vehicles that he had acquired before they married: a 1996 Ford van, a 1951 Dodge, a 1923 Ford, and a 2000 Ford. According to appellant, she continued to take care of members of the Temple Garden and to make flower arrangements every Monday. She also asserted that respondent had promised to give her the property that he owned in Oregon and San Diego. When asked whether she had any proof that respondent gave her the properties and cars, she stated that her testimony was proof. As for the audiology business, she testified that the business was hers. She worked hard and the revenue from this business increased by $80,000 between 2006 and 2007.

The trial court informed appellant that she could present additional evidence but that she "should do it in Japanese." She was also told that she could present evidence later in the trial.

Respondent then presented his case. He was approximately 82 years old and had been an audiologist for approximately 45 years. He was currently working about a day and a half each week and had been doing so for at least five years.

Respondent testified that he had never given, or promised to give, appellant the Sunnyslope property in Hollister, the two properties in Oregon, the property in Lake Elsinore, or the property in San Diego. These properties were purchased and paid for in full prior to his marriage to appellant. He explained that he started the Temple Garden in 1996. In 2014, he donated the Riverside property to the Temple Garden, and retained no ownership interest in this property. He also denied that appellant was ever a member of the board of directors of the Temple Garden.

Respondent purchased a 1996 Ford in 1996, a 1951 Dodge in 1994, a 1923 Ford in 2004, and a 2000 Ford in 2001. He paid for all of these vehicles prior to the marriage.

He purchased a 2009 Chrysler during the marriage with cash from "an emergency fund that [he'd] had for many years" prior to the marriage.

Respondent maintained that the date of the parties' separation was December 2009.

In its decision after trial, the court found, among other things, that the evidence did not support appellant's claim that she acquired or was entitled to an ownership interest in respondent's real property or his audiology business. The trial court also found that the vehicles were respondent's separate property with the exception of the 2009 Chrysler, which was appellant's separate property. The trial court further found that the separation date was May 20, 2015.

II. Discussion

A. Qualifications of Interpreter

Appellant contends that she was deprived of a fair trial, because the interpreter was not certified. She also contends that the trial court and respondent's counsel had difficulty understanding her English. She further contends that trial court failed to follow the requisite procedures for choosing a noncertified interpreter.

In support of her contention that she needed a well-qualified interpreter, appellant first points out that she was not represented by counsel and she wanted to present evidence that "may be difficult to demonstrate for a member of the bar." That appellant was not represented by counsel does not advance her position. Self-represented parties are held to the same standards as parties who are represented by counsel. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Nor are we persuaded that appellant was denied a fair trial because the interpreter was not qualified. Appellant first raised this issue in a declaration in support of her

motion for a new trial.[1] Her declaration stated that she read from her notes at trial "because very often [she had] some difficulty expressing [herself] or being understood in English. . . . [She] experienced repeated frustration during the trial whenever [she] spoke through the interpreter; often, the interpretations she gave were, in [her] opinion, not accurate. That is why [she] repeatedly returned to expressing [herself] in English directly to the court. The judge often instructed [her] to speak through the interpreter, especially when [her] husband's attorney complained that he could not understand [her] words. [She] believe[d] that a more accurate interpretation of [her] words would have been possible with a more competent interpreter."

The record does not support her contention. The transcript of the trial establishes that appellant was able to communicate effectively with the trial court. Appellant informed the trial court that she would testify in English and would ask the interpreter for assistance when necessary. She never stated that she had difficulty expressing herself or being understood in English. The trial court stated that it was able to understand her. When the trial court or respondent's counsel did not understand her use of English, she was asked to speak in Japanese. At no point during the trial did appellant state that the interpreter was not correctly interpreting her testimony or that she did not understand the interpreter. Thus, appellant has failed to establish that she was deprived of a fair trial.

Regarding statutory procedures governing interpreters, we note that a person who interprets during court proceedings "shall be a certified court interpreter," except when good cause is shown. (Gov. Code, § 68561, subd. (a).) A court that "for good cause appoint[s] an interpreter . . . who does not hold a court interpreter certificate . . . shall follow the good cause and qualification procedures and guidelines adopted by the Judicial Council." (Gov. Code, § 68561, subd. (c).) Moreover, "[i]n any court proceeding, if a

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[1] Appellant has not included either her motion for a new trial or the reporter's transcript for the hearing on this motion in the record on appeal.

court appoints an interpreter pursuant to subdivision (c), . . . the judge in the court proceeding shall require the following to be stated on the record: [¶] (1) A finding that a certified or registered interpreter is not available. [¶] (2) The name of the qualified interpreter. [¶] (3) A statement that the qualified interpreter meets the requirements of subdivision (c) . . . and that the required procedures and guidelines adopted by the Judicial Council have been followed. [¶] (4) A statement that the interpreter's oath was administered to the qualified interpreter pursuant to the procedures and guidelines adopted by the Judicial Council." (Gov. Code, § 68561, subd. (f).)[2]

In the present case, it is conceded that the interpreter was not certified and that the trial court did not follow the statutory procedures set forth in Government Code section 68561. However, "'"[a]n appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought . . . , where an objection could have been, but was not, presented to the lower court by some appropriate method . . . ."'" (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) The rationale for this rule is that "'"it is *unfair to the trial judge and to the adverse party* to take advantage of an error on appeal when it could easily have been corrected at the trial."' [Citation.]"

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[2] Judicial Council form INT-100-INFO, which was in effect at the time of trial, is headed: "PROCEDURES AND GUIDELINES TO APPOINT A NONCERTIFIED OR NONREGISTERED INTERPRETER IN CRIMINAL AND JUVENILE DELINQUENCY PROCEEDINGS." Similarly, former California Rules of Court, rule 2.893 on which the form is based only applied to criminal and juvenile proceedings. The rule in effect at the time of trial stated: "(a) Application. [¶] This rule applies to trial court proceedings in criminal cases and juvenile delinquency proceedings under Welfare and Institutions Code section 602 et seq. in which the court determines that an interpreter is required." Thus, Judicial Council form INT-100-INFO would not have applied in the present case.

Judicial Council form INT-100 in effect at the time of trial stated: "All of the information provided by the noncertified or nonregistered interpreter should be considered by the court to determine whether the interpreter is appointed to interpret the stated language." This form is limited to court-appointed interpreters and cases covered by former California Rules of Court, rule 2.893.

(*Id.* at p. 590.) Since appellant failed to object at trial to the use of a noncertified interpreter, she has forfeited the issue on appeal.

Even assuming that the issue has not been forfeited, this contention has no merit. Government Code section 68561 refers to interpreters "appointed" by the trial court. Here, the trial court did not "appoint" the interpreter. There is no record of appellant notifying the trial court that she would need the services of an interpreter prior to trial or during any of the court proceedings between the filing of the petition on May 20, 2015, and the trial on June 15, 2017. Nor is there anything in the record indicating that the interpreter was employed by the court. Accordingly, Government Code section 68561 did not apply.

B. Division of Property

1. Apportionment of Audiology Business

Appellant contends that the trial court erred when it failed to make a ruling on her claim for apportionment of the audiology business.

Appellant testified that she worked in the audiology business for 17 years, thereby increasing the revenues from the business. She also testified that the revenues increased $80,000 from 2006 to 2007. Neither party produced evidence of the value of the business when the parties married in August 2006. Respondent produced the only evidence of the value of the business when the parties separated. Respondent's 2015 tax return shows business income of $549 for the entire year. The attachments to respondent's income and expense declaration shows a net income of $590 for the period of August 2015 through July 2016. Respondent also testified that he was semi-retired prior to the marriage and currently worked in the business approximately one and a half days per week.

"Where community efforts increase the value of a separate property business, it becomes necessary to quantify the contributions of the separate capital and community

effort to the increase. [Citation.]" (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 851 (*Dekker*).) "The community is entitled to the increase in profits attributable to community endeavor. [Citations.] Accordingly, courts must apportion profits derived from community effort to the community, and profits derived from separate capital are apportioned to separate property. [Citations.]" (*Id.* at pp. 851-852, fn. omitted.) The need for apportionment between separate capital and community effort "arises when, during marriage, more than minimal community effort is devoted to a separate property business. [Citations.]" (*Id.* at p. 851, fn. omitted.)

In *In re Marriage of Denny* (1981) 115 Cal.App.3d 543 (*Denny*), the parties presented evidence that the respondent's separate property business was worth no more at the time of separation than at the time of marriage. (*Id.* at p. 548.) The trial court excluded the appellant's offer of proof that she would testify that the business had no value at one point during the marriage and its increased value created a community asset. (*Ibid.*) The Court of Appeal upheld the trial court's ruling that "no community interest in increased value is acquired" under these circumstances. (*Id.* at p. 550.) Relying on *Beam v. Bank of America* (1971) 6 Cal.3d 12, the *Denny* court reasoned that "[t]he *Beam* court placed upon trial courts the burden of determining the fair market value of a separate business at the time of marriage and again at the time of separation. It did not anticipate that the trier of fact would be required to track the oscillations in growth or decline of a business throughout the marriage." (*Denny*, at p. 550.)

Here, there was no evidence of the value of the audiology business at the time of marriage and little evidence of its value at the time of separation. Without other evidence, appellant's testimony that her work increased the revenues of the business several years before the date of separation was insufficient to allow the trial court to "apportion profits derived from community effort to the community, and profits derived from separate capital . . . to separate property." (*Dekker, supra,* 17 Cal.App.4th at

pp. 851-852.) Thus, we reject appellant's contention that the trial court was required to apportion profits from the audiology business to the community.

2. Oral Promise to Convey Real Properties and Audiology Business

Appellant next contends that her testimony of respondent's repeated promises to give her his separate property and her efforts in reliance on those promises created a prima facie case of equitable estoppel. We disagree.

Married persons may, by agreement or transfer, "[t]ransmute separate property of either spouse to community property." (Fam. Code, § 850, subd. (b).)[3] Section 852, subdivision (a) specifies the requirements for such transmutations: "[a] transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." Here, there was no evidence of a writing that contained an "express declaration" by which any "transmutation" of respondent's real properties or audiology business was made and accepted by respondent.

However, appellant claims that *In re Marriage of Benson* (2005) 36 Cal.4th 1096 (*Benson*) left open the question of whether the doctrine of equitable estoppel potentially limited application of section 852 to oral promises of transmutation. In *Benson,* the husband transferred his community property interest in their house to a trust after the wife orally promised to waive in writing her community property interest in the husband's retirement accounts. (*Benson,* at pp. 1101-1102.) But the wife did not waive her interest in writing as required by section 852. (*Benson,* at p. 1102.) Reasoning that the husband's transfer of the house to the trust was "'part performance'" of the oral agreement, the lower courts concluded that the wife relinquished her community property interest in the retirement accounts. (*Ibid.*) The California Supreme Court reversed the judgment. (*Ibid.*) The court reaffirmed that "section 852(a) cannot be satisfied where there is no

[3] All further statutory references are to the Family Code.

writing about the subject property at all, and where a transmutation would have to be inferred from acts surrounding the contract in dispute." (*Id.* at p. 1107.) The court further found that it found "no evidence the Legislature intended to incorporate traditional exceptions to the statute of frauds into section 852." (*Id.* at p. 1109.)

The *Benson* court also noted that it "need not consider, in this case, whether there are *any* circumstances that might estop a marital partner from invoking section 852(a). . . . As counsel acknowledged, an estoppel theory in this case is entirely dependent on, and congruent with, his claim that, despite section 852(a), his execution of the deed effected a transmutation of his retirement accounts because it constituted part performance of a spousal agreement for such transmutation. Hence, recognition of an 'estoppel' in this case would entirely circumvent our holding that 'part performance' is *not* an exception to the strict requirements of section 852(a)." (*Benson, supra*, 36 Cal.4th at p. 1109, fn. 6.) Similarly, here, appellant's claim of respondent's promises to give her his separate property and her reliance on those promises would also circumvent the holding in *Benson*. Thus, appellant's reliance on *Benson* is misplaced.

III. Disposition

The judgment is affirmed. Costs on appeal are awarded to respondent.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

_____
Danner, J.

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